

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES C. BELL,	§
	§ No. 374, 2010
Plaintiff Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
SHERYL WINSBY ASSOCIATES,	§ C.A. No. 08C-12-188
SHERYL J. WINSBY, Ph.D., and	§
BAYHEALTH MEDICAL	§
CENTER, INC., a Delaware	§
corporation,	§
	§
Defendants Below-	§
Appellees.	§

Submitted: August 13, 2010

Decided: September 22, 2010

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 22<sup>nd</sup> day of September 2010, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The plaintiff-appellant, James C. Bell, appeals from the Superior Court's May 28, 2010 order granting the motion of the defendants-appellees, Sheryl Winsby Associates et al. ("Winsby"), for summary judgment. Winsby has moved to affirm the Superior Court's judgment on

the ground that it is manifest on the face of the opening brief that the appeal is without merit.<sup>1</sup> We agree and affirm.

(2) The record reflects that Bell filed a complaint in the Superior Court alleging that, on January 8, 2007, he was injured as the result of slipping on a wet surface and falling down a stairway at Winsby's medical facility in Milford, Delaware. Bell alleged that Winsby was negligent in, among other things, failing to keep the premises safe from a dangerous condition. Bell, who had a prior history of significant low back and neck pain, demanded compensation for medical expenses and pain and suffering.

(3) The record further reflects that, during discovery in this case, Bell, who was represented by counsel, never identified any expert witness who would provide a medical opinion on causation for purposes of trial. At oral argument on the summary judgment motion, Bell's counsel stated that he anticipated calling Bell's treating physician to testify at trial, but did not know the physician's opinion on causation because he had not been deposed.

(4) In this appeal, Bell claims that his attorney failed properly to represent his interests in his lawsuit.

(5) In a case in which the defendant's negligence is alleged to have caused plaintiff's physical injuries, the plaintiff has the burden of offering

---

<sup>1</sup> Supr. Ct. R. 25(a).

expert medical testimony to establish causation.<sup>2</sup> Causation in such circumstances is not a matter of common knowledge for a lay jury.<sup>3</sup> Without such expert medical testimony, it is impossible for the plaintiff to establish a critical element of his *prima facie* case.<sup>4</sup>

(6) On a motion for summary judgment, the moving party bears the burden of demonstrating that there is no material fact in dispute and that he is entitled to judgment as a matter of law.<sup>5</sup> Summary judgment is appropriate only where, viewing the evidence in the light most favorable to the non-moving party, there is no issue as to any material fact.<sup>6</sup> We review the Superior Court's entry of summary judgment *de novo*.<sup>7</sup>

(7) In the instant case, our *de novo* review leads us to conclude that the Superior Court invoked the appropriate legal standards on Winsby's motion for summary judgment. In the absence of any issue of material fact and viewing the evidence in the light most favorable to the non-moving party, the Superior Court properly granted the motion.

(8) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by

---

<sup>2</sup> *Campbell v. DiSabatino*, 947 A.2d 1116, 1118 (Del. 2008).

<sup>3</sup> *Id.*

<sup>4</sup> *Money v. Manville Corp. Asbestos Disease Comp. Trust Fund*, 596 A.2d 1372, 1375 (Del. 1991).

<sup>5</sup> *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

<sup>6</sup> *Id.*

<sup>7</sup> *Estate of Rae v. Murphy*, 956 A.2d 1266, 1269-70 (Del. 2008).

settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.<sup>8</sup>

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

---

<sup>8</sup> To the extent Bell is attempting to assert a claim of legal malpractice, any such claim is not cognizable in this proceeding and must be asserted in a separate civil action against the attorney.